

**K Mart Corporation d/b/a Super K Mart Center
(Broadview, Illinois), and United Food and
Commercial Workers Union, Local 546, Char-
tered by United Food and Commercial Work-
ers International Union, AFL-CIO, Petitioner.
Case 13-RC-19476**

April 29, 1997

ORDER DENYING REVIEW

**BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS**

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent parts of which are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.¹

¹ The only issue raised in the request for review is whether the Regional Director erred in finding that the petitioned-for meat/seafood department employees constitute an appropriate unit.

APPENDIX

DECISION AND DIRECTION OF ELECTION

The names of the parties appear as amended at the hearing. The Employer's store located at Broadview, Illinois, is the only facility of the Employer involved in this petition, and shall be referred to as the Broadview facility or store. The meat/seafood department at the Broadview store shall be referred to as the meat department and includes the sale of fresh and frozen seafood and related products as well as fresh, frozen, smoked, and prepackaged meat and related products.

The Petitioner seeks to represent a unit of all full-time and regular part-time employees who work in the meat/seafood department of the Employer's Broadview, Illinois facility excluding the meat department manager, whom the Petitioner contends is a supervisor within the meaning of Section 2(11) of the Act. The Employer contends that the only appropriate unit is a wall-to-wall unit, including all full-time and regular part-time employees employed at its Broadview, Illinois facility. The Employer takes the position that the meat department manager is not a statutory supervisor and should be included in any unit found appropriate.

The Broadview facility is a large store, occupying approximately 165,000 square feet of selling space. Testimony in the transcript indicates that the total square footage of the facility is 108,000 square feet, which is obviously incorrect, as that number is less than the amount of space designated as selling space. The Broadview store opened in August 1994. The Employer merchandises clothing, food, appliances, hardware, electronics, and cameras, in addition to many other items at the Broadview facility. It is open 24 hours a day, 7 days a week. There is no history of collective bargaining at the Broadview store affecting any of the employees involved in this proceeding.

The Broadview facility is divided into three main merchandising sections: hard lines, which includes electrical ap-

pliances, toys, camera and photo department, garden center, sports, and automotive; soft lines, including clothing, accessories, and jewelry; and, food, including grocery, dairy, frozen, meat, produce, bakery, deli, health and beauty aids, pet products, and the food court. There is a Little Caesar's pizza outlet, which is a franchised enterprise. Each section is supervised by an assistant store director. There are approximately 470 employees at the Broadview facility, half of which are assigned to the food section. Approximately 77 percent of the Broadview facility's employees are part-time employees.

The store director is responsible for the overall supervision of the facility. Under him are four assistant directors, one for the front end (cashiers, cash and general offices, invoicing, and layaways), one for hard lines, one for soft lines, and one for food. Under the assistant director for food are the assistant manager for dry groceries, the assistant manager for consumables, such as health and beauty aids, candy, party goods, and greeting cards, and an assistant manager of perishables, including the meat, deli, produce, and bakery departments. Each of the aforementioned departments in perishables has a department manager who reports to the assistant manager of perishables. The record is unclear as to which assistant manager supervises the dairy and frozen department and the floral department at the Broadview facility.

The meat department manager schedules meat department employees, selecting the shifts, days of week, and hours of work for each employee in the department. He directs the meat department employees in their everyday work, determining which employees will cut meat; who will trim and package meat; who will open meat deliveries and place them in the cooler; and who will stock the counters and cases and insure that the counters, cases, and shelves remain stocked and properly faced. The meat department manager must approve vacation requests before the requests are transmitted to the human resource department. The meat department manager determines which employee will be called into fill a vacancy in the event of an unforeseen absence. If overtime is approved by the store director, the meat department manager determines which employee is offered the overtime. The meat department manager can approve requests for time off without first obtaining input from the human resources department. The meat department manager is responsible for completing performance reviews on each employee in the department. On each employee's anniversary date, the meat department manager evaluates each employee for various traits and abilities, such as productivity, attitude, working skills, on the basis of a 1 to 10 scale. The meat department manager can recommend increases in pay for department employees which, according to the testimony of the Broadview store's human resource manager, are relied upon by the store director. The meat department manager may initiate a personnel interview form which may communicate to employees a verbal warning as well as notice of position change, or wage rate change without input from the human resource department. Notice of corrective action, which can lead to termination may be initiated by the meat department manager but requires the concurrence of the human resource department. Corporate policy requires that two managers must be present at the corrective action interview with the involved employee. Notices of corrective action also may, have a bearing on the employee's performance reviews. Only the store di-

rector and the human resources manager have the authority to terminate employees. The record shows that the meat department manager is involved in interviewing applicants for openings in the department, and that the human resource manager relies on the recommendation of the meat department manager in making hiring decisions. According to the job description, the meat department manager, among other things, is "responsible for selecting, orient, train and develop department associates." The meat department manager is salaried, while the meat department employees, as well as the employees in the unit proposed by the Employer, are all hourly paid. The meat department manager receives different medical coverage than the hourly paid employees, and receives an extra week of vacation in the first year of employment over what the hourly employees receive. The meat department manager is responsible for the overall conditions of the meat department, including profitability.

The petitioned for unit consists of 14 employees, 4 meatcutters, and 10 perishable associates, 2 of whom function as meatwrappers. Although the meat department manager testified that three of the perishable associates are part-time employees, the payroll records submitted by the Employer, indicate that only one employee in the meat department, a meat/seafood service associate, works part time. Subsequent to the filing of the instant petition but approximately 1 week prior to this hearing, the Employer, at the Broadview facility changed the titles of the floral service associate, produce service associate, deli service associate, bakery service associate, meat/seafood service associate, and meatwrapper to perishables service associate and the titles of meatcutter to meatcutter I and journeyman meat cutter to meatcutter II. According to the announcement of the changes, "Associates will be scheduled to work in what were formerly 'different' areas within the Perishables side of the store. Associates may have a different supervisor and may perform a wider variety of tasks." The record does not show that perishable associates were assigned to "different" areas of the store or to "different" supervisors at the time of the hearing.

The record is fragmentary with regard to the level of meat handling experience the employees possessed when they were hired or brought into the meat department at the Broadview store. The only meatcutter from the Broadview facility who testified has 31 years of meatcutting experience. He testified that when he was hired at the Broadview store, the meat manager asked him about his experience and knowledge of cutting meat. The specific experience level of the three other meatcutters at the Broadview store is not shown in the record, however, the meat department manager testified that all had training before coming to the store. All the meatcutters initially hired at the Elk Grove facility were hired as experienced meatcutters and at the opening of that store in January 1994, all the wrappers who were hired, had prior experience as did one of the two meat clerks. The record does not show whether the perishable associates at the Broadway store who function as meatwrappers had prior experience, but the record does show that some perishable associates hired or transferred into the meat department at the Broadview store had no prior experience in meat stores or departments.

Most of the meat department's fresh meat is supplied by one supplier, Super Value, which receives it from two primary sources, Iowa Beef Processors and Excel Beef Produc-

ers. Approximately 40 percent of the department's sales, not including fish sales, are fresh beef, pork, veal, and lamb. Fresh and frozen poultry accounts for slightly more than 13 percent of the meat department sales. The remainder of the sales are in smoked, frozen, cooked, and prepackaged products, including bacon and lunchmeats. Of the fresh meat products sold, beef accounts for approximately 73 percent of the sales, pork accounts for 26 percent while the sales of veal and lamb are negligible.

As noted above, the meat department sells, inter alia, beef, pork, lamb, and veal. All four meats are received as boxed meat, as the store does not handle carcasses of meat. Generally, the meat is contained in a plastic Kryovac wrapping, which must be cut opened before the meat can be further processed. Veal and lamb need little additional processing before the meatcutters make their retail cuts. Most of the poultry received is "case ready" which means that it is packaged into the various whole and parts, labeled, priced, and ready to be put into the display cases for retail sale. The meat department does not process poultry in any way, other than to change the affixed label if the price had changed since the product was received. Occasionally, the Broadview location receives chickens which were ice packed in a box because of a special order or because of a special price. The department employees just dump the chickens out of the box and tray them, that is, place the chickens in a Styrofoam tray with an absorbent pad, wrap the tray with plastic film, and put a label on the film with the price on it.

Ground beef is received in 10-pound tubes of ground beef, certified ground chuck, certified ground round, certified ground sirloin, and certified extra-lean ground beef, each of which have a different fat content. The boxed beef is received in primal and subprimal cuts. Primal cuts are larger pieces of meat, such as rounds, chucks, loins, and ribs, which are reduced into subprimal cuts or directly cut into various retail cuts. The rounds can be processed into top rounds, eye of the round, and bottom round. The subprimals are smaller cuts of meat, weighing approximately 12 to 15 pounds each, which are directly broken down into retail cuts of meat. The primal cuts of beef weigh approximately 40 to 85 pounds. The record, through pictures taken by the Employer for the hearing, shows that the meat cooler at the Broadview store contained both primal and subprimal boxed beef.

As noted above, all primals and subprimals must be processed by the meatcutters before the meat is ready for retail sale. Generally, the meatcutter process the meat according to a cut list supplied to them in the morning. The cut list may first be prepared by an associate who notes what product is lacking in the meat cases. After that cut list is fulfilled, generally the meat department manager will determine the next cut list, depending on the department's products on sale and the amount of meat already in the self-service cases. The cut list also depends upon the schematic for the meat department which is supplied by corporate headquarters. The schematic sets the level of product to be in the cases, Monday through Friday. The cutting, trimming, wrapping, and packaging of the meat is done in the meat prep room, which is behind the meat department counters, and is not accessible to customers. In processing the meat, the meatcutters use band saws, both with toothless (just for meat) and toothed (for boned meat) blades, knives, slicers, grinders, and cubing machines. All of the meatcutters' tools are supplied by the Employer, and the

meatcutters are responsible for the daily sharpening of their knives.

Although the Employer witnesses in the Elk Grove Village proceeding testified that, because of the "user friendly" product purchased, it was no longer necessary to seam meat, that is cutting the membrane between the muscles of the various cuts of meat at the point where the natural seams of meat are located, the former meat manager at that store testified that occasionally whole beef rounds were received which had to be seamed and divided into the various component pieces. He also testified that, even when supplied with "user friendly" meat, the meatcutters would have to seam out meat. The meatcutter from the Broadview store who testified in this proceeding testified that the meatcutters at the Broadview store also continue to seam meat. Record testimony in both proceedings show that the meatcutters angle the meat daily, that is, make a first cut in a piece of meat which makes the cutting of the remainder more regular, with less waste, and this was done, even with "user friendly" meat products. Likewise, even with more "user friendly" meat products, the Kryovac wrapping in which the meat is packaged causes the meat to darken at the ends so that it must be trimmed by the meatcutters. The meatcutters daily have to face the meat, and the meat cutters also "chime" the bone of meat with the bone in, which is a process that flattens the bone to remove its sharp edge and remove any discoloration on the bone. This is done both to improve the appearance of the product, as well as to remove the sharp edge which could pierce the plastic film used in wrapping the product. In processing the meat that comes into the store into consumer ready cuts, the meatcutters use steak knives, bone-in knives, and saws to cut, bone, scrape (remove the bone shavings from the meat), face, square-off, and trim (remove excess fat) the meat. They also tray the meat (place the meat in a Styrofoam tray with an absorbent pad underneath).

Generally, the first work performed by the meatcutters in the morning and at one or two additional times during the day is grinding beef. Although the Employer generally purchases a fine grind, the beef is ground at least one more time through a grinder and is either packaged in a bulk amount or is placed into a patty machine to make beef patties. Scraps or trimmings of beef removed during processing can only be used in ground beef, not in certified beef grinds, according to the Employer. A meatcutter testified that at the Broadview location scraps and trimmings of beef were added to the certified grinds at times. Although ground pork is sold at the facility, there was no testimony on whether pork scraps are used or whether the pork is already ground when purchased.

In addition to processing meat from the cut list, the meatcutters process special orders, particularly at holidays, such as Christmas or Easter and on weekends. These special orders are meat products not ordinarily sold either in the gourmet case or the open meat counters, such as a pork crown roast or a standing rib roast. Often customers desire a special cut of meat, such as extra thick or extra thin cuts, or they just want to have the desired meat product cut especially for them for freshness. Additionally, customers often ask the meatcutters for advice on how to cook certain products.

All of the meatcutters work 8 hours a day, 40 hours a week. According to the Employer's witnesses, the meatcutters spend approximately one-half a day cutting meat with the remainder of their day spent marking the incoming meat

products with the delivery date; storing the product either in the freezer or cooler; taking the equipment apart and putting it back together again after it has been cleaned by an outside service; cleaning the prep room; and stocking the cooler, freezer and retail counters and cases with meat, poultry and lunch meats. The Employer's witnesses state that the meatcutters daily stock the various meat counters and cases, while the former meat manager at the Elk Grove Village store testified that the high hourly wages of the meatcutters make it uneconomical to use them for unskilled and menial tasks. The meatcutter from the Broadview store who testified in this proceeding testified that the meatcutters spend a great deal of time all day long cutting meat, and that the meatcutters have spent up to 8 hours just working on the saws. On one occasion, a meatcutter was sent to the front of the store to help bag customers' purchases, but was called back by the meat manager after about 1 minute because he did not want his butchers bagging.

The wrappers take the trays of meat, punch in the correct PLU (product look up) number into the automatic wrapping machine, based upon their knowledge of the cuts of meat they are wrapping, place the tray into the machine and the tray emerges from the machine, wrapped in plastic, with a scan bar and the total cost of the package contained on the label affixed to the package. The meatwrappers should know the cuts of meat they are wrapping. If the wrappers are not knowledgeable concerning the correct PLU number, they may look them up in a book containing all the cuts of meat with corresponding PLU numbers. After the trays come out of the wrapping machine, the wrappers load the trays of meat onto platters which either go into the cooler or are directly placed at the retail sales counters or cases. The perishable associates staff the gourmet counter, the seafood counter, and continually stock the fresh and frozen meat counters, as well as those counters which contain fresh and frozen poultry and frozen seafood and other related products. Additionally, the perishable associates help make prepared foods, such as meatloaf, stuffed chops, and shishkabob. One perishable associate, a meatwrapper, is the only employee, other than the meatcutters, who is able to operate the grinder, the cubing machine, the patty machine, and make sausages. To make sausages pork scraps are ground, after which the seasoning is added, the mixture is mixed on a mixer and then put through the stuffer. Only one perishable associate is able to disassemble and clean these machines and reassemble them. Normally, the machines are reassembled by the employees who are the first employees in the meat department in the morning, the meatcutters.

There was little testimony concerning the operation of the seafood counter. However, one of the meatcutters testified that, in learning his trade, he learned how to fillet fish for customers. There was also testimony that, when the associates working at the seafood counter have a hard time cutting fish, the meatcutters will cut it for them. Additionally, the meatcutters help out the associates at the seafood counter in the evening. It is unknown the amount of time a meatcutter would spend servicing seafood customers. Both the gourmet case and the seafood counter are not self-service, but require the attention of the perishable associates. If the customer wants a fish filleted, the perishable associate will normally fillet it.

The Employer does not have an apprenticeship program for meatcutters and the record does not disclose any type of specialized training program for the meat department employees. As noted above, all the meatcutters had training in the field before being hired by the Employer. All the meatcutters at the Elk Grove facility had at least 8 years' experience and the former meat manager at that store testified that he would only hire meatcutters with at least 5 years' experience so that he can allow them to work independently without constant supervision. As noted above, the Broadview meat manager testified that all the meatcutters at that store had training before being hired, and a meatcutter from that store testified that he had 31 years of experience as a meatcutter. There is no testimony with regard to the Broadview store about how long it would take to learn various facets of the meatcutters skills utilized at that store. There was considerable conflict with regard to this subject in the record of the Elk Grove proceeding. In that proceeding an Employer witness stated that a deli employee, with appropriate intelligence, might be able to learn the meatcutters job within a month. However, a meatcutter at the Elk Grove facility testified that it would take 7 years' experience to be able to perform the meatcutting work at that facility and a former meatcutter at that facility testified that it would take 3 to 4 years' experience to perform the position proficiently. The meatwrapper's job description summarizes that the employee who fills this position should have 1 to 2 years' retail experience for wrapping all cuts of meat and filling the meat cases.

The meatcutters are the highest paid employees in the Employers' stores. The meatcutters at the Broadview store earn between \$17.70 and \$17.90 an hour, or \$36,816 to \$37,232 annually. The meatcutters at the Elk Grove facility earned \$17.60 per hour, or \$36,608 on an annualized basis. The meat department manager at the Elk Grove facility earns approximately 110 to 115 percent of the wages paid the meatcutters, while two of the managers of the deli, bakery, and produce departments earn 91 percent and 84 percent of the meatcutter wage and the third manager earns about the same as the meatcutters. The managers are all on salary. The record does not show comparable wage rates for the department managers at the Broadview store. The wage rates paid the meatwrappers is slightly higher than the wages paid to those employees the Employer contends have comparable skills in the perishable departments, such as the bakers and cake decorators, and the wages of the other perishable associates appear to fall within the range of other comparable employees with similar length of service with the Employer.

All the store employees receive the same vacation, holidays, sick pay, health insurance, retirement plan, and other benefits. All new employees, including new meat department employees, go through the same orientation program. All employees are subject to an annual evaluation conducted by their department managers. All employees are able to use the employee breakroom. There are promotional contests open to all employees and all employees are eligible to receive a K-Note award given to employees who go beyond the call of duty. Some storewide employee meetings are held which the meat department employees attend. Because the meatcutters spend much of their workday in the cooler, they wear layers of heavy clothes topped with a long white smock with a plastic apron and a cloth apron over it. The meatwrappers and counter associates do not wear layers of clothing but do

wear the long smock, as do some employees in other departments, such as deli and bakery. A freezer coat is available to employees who work in the freezer, both meat department employees and other employees. The majority of the customer service associates wear a red polo shirt and black pants. Some of the perishable associates wear a red polo shirt similar to the shirts worn by the other store employees. The bakery employees wear white pants, white shirts, and white aprons. The deli employees wear red aprons. While the grocery and produce employees wear no headgear, the meat department male employees wear red baseball hats, the female meat department employees wear red berets and the meatcutters wear hard safety hats similar to a construction helmet. The bakery department employees also wear berets and baseball caps while the deli department female employees wear berets. The meatcutters wear mesh gloves while cutting meat. The seafood and deli department employees wear a wizard glove, which is a cloth glove with a metal lining, when cutting product.

Job openings are first posted within the store and are available to any qualified employee. Only if the vacant job cannot be filled from within the store, does the Employer advertise or look elsewhere for qualified applicants. At least three of the perishable associates at the Broadview facility worked in other departments of the facility before transferring into the meat department. One had previously worked in the deli department, one worked in both the grocery department and produce department and one was a bagger and pushed carts before transferring to the meat department. No perishable associates at the Broadview facility have transferred out of the meat department to other departments within the store. The meat department manager at the Broadview facility testified that five employees from other departments have worked in the meat department, however, he did not testify how long or how often these employees worked in the meat department with the exception of one, who worked two consecutive 5-day weeks in the meat department during May or June. One meat associate works in the deli when they are short of personnel, perhaps 1 day a month. Meat department employees have worked in the deli department on occasions and have helped bag groceries at the cash registers when needed for approximately 15 to 20 minutes at a time. The facility does not expect the meatcutters or the employee filleting fish to be assigned to bagging groceries.

At the Bridgeview facility, as at the Elk Grove facility, other departments utilize space near the meat department for their products and the meat department may utilize space in other departments in a cross-merchandising scheme. The home department for the merchandise being cross-merchandised is responsible for building the display, retrieving and stocking the merchandise in the other departments area, and the department in which the product is being display is responsible for facing the product. This process results in some contact between employees in various departments of the store. The products that are being cross-merchandise change throughout the year. For example, pallets of Coke may be cross-merchandised in the meat department, as may charcoal in the summertime, spice racks, or olives. The meat department, in turn, displays a sausage rack in the frozen food aisle. Additionally, the various departments use materials ordered for other departments. For example, the white coats worked by the meat, deli, and bakery department employees

is laundered by a service contracted by the meat department. The deli uses 17-inch trays that are ordered by the meat department, while the seafood department uses small containers ordered by the deli department. The meat, bakery, and deli, among other perishable departments, require that the associates use disposable plastic gloves, which are changed after each customer. These gloves are ordered by the meat department.

Appropriate Unit

Historically, the Board found that meat department units were presumptively appropriate because the meatcutters exercised a broad range of traditional meatcutter skills. See, e.g., *R-N Market, Inc.*, 190 NLRB 292 (1971); *Big Y Food*, 238 NLRB 855 (1978). Later, with the advent of boxed meats, the meatcutters no longer handled the full panoply of traditional meatcutter's skills, including handling carcasses. Therefore, the Board found that their skill level did not warrant applying the presumption that a unit limited to meat department employees was appropriate. *Ashcraft's Market*, 246 NLRB 471 (1979); *Great Day, Inc.*, 248 NLRB 527 (1980); *Hall's Super Duper*, 282 NLRB 1116 (1986); and *Copps Food Center*, 301 NLRB 398 (1991). The Board, in these cases, applied a traditional community-of-interest standard in determining whether a separate meat department was appropriate, and found, in each case, that it was unwarranted when the meatcutters primarily handled boxed meat, which the Board, in a conclusionary manner, found did not involve the exercise of any traditional craft skills, and other evidence showed that the meatcutters had a strong community of interest with other employees. Thus, for example, in *Hall's Super Duper*, the Board found a unit limited to meat department employees to be inappropriate where the meatcutter's primarily handled boxed and case ready meats and the employees in the meat department had a strong community of interest with other store employees, including similar wages, benefits, common facilities, and regular contact with other store employees, even though the meat department was separately supervised and there was little interchange between the meat department employees and other store employees.

However, recently, in *Scolari's Warehouse Markets*, 319 NLRB 153 (1995), the Board held that its prior approach was overly restrictive and that it is "incumbent upon the Board to consider the actual work performed by the meatcutters in order to determine whether they continue to exercise substantial, traditional meat cutter skills." *Scolari's*, supra at 156-157. The Board stated that:

The use of boxed meat was not distinguished from the use of case-ready meat, but rather, was contrasted with the use of sides of beef requiring the exercise of full journey-level skills. Thus, the Board in *Hall's*, noting that three-quarters of the meat was prepackaged and a quarter was boxed meat, stated the meatcutters did not exercise traditional butchering skills but merely cut the delivered meats into smaller portions and trimmed the fat prior to the wrapper's weighing and measuring the meat. The Board did not analyze the skills necessary to handle the employer's boxed meat and, as indicated, made no distinction between processing boxed and case-ready meat. Similarly, in *Copps*, the Board

failed to detail the meatcutting skills necessary to handle the employer's boxed meat.

Upon further consideration we find that when a significant amount of meat department work involves handling boxed meat, it is incumbent upon the Board to consider the actual work performed by the meatcutters in order to determine whether they continue to exercise substantial, traditional meatcutters skills. *Id.* at 156-157.

In footnote 9 of the *Scolari's* decision, the Board stated, "To the extent that *Copps*, *Hall's* and related cases differ with this determination, they are hereby overruled." *Id.* at 157. Thereafter, the Board, in applying the traditional community-of-interest test, found that the petitioned for meat department constituted an appropriate separate unit, stating:

In sum, we found that the following factors: (a) the substantial portion of the Employer's meat department business involving boxed meat; (b) the continued application of specialized meatcutting skills necessary for the processing of boxed meat; (c) the higher level of training of meatcutters; (d) the substantial percentage of the unit engaged in skilled meatcutting work; (e) separate supervision; (f) limited interchange and transfers; and (g) higher wages, outweigh the factors of common benefits and limited skills necessary for handling the Employer's case-ready meats, and support a finding that the meat department employees have a distinct community-of-interest apart from that of the Employer's other employees. *Id.* at 158.

In *Scolari's* the Board did not define the range of specialized meat cutting skills necessary nor the weight such skills should be given vis-a-vis other community-of-interest factors in determining the appropriateness of a separate meat department unit other than an appropriate meat department unit may be found even where the meatcutters exercise less than the full range of traditional meatcutting crafts. Member Browning in footnote 12 of the *Scolari's* decision stated that, while she agreed with the result reached by the Board, she would find it sufficient that the meatcutters used different skills and perform distinctly different functions from those performed by employees in other departments, in addition to the other community-of-interest factors cited by her colleagues. Thus, it is clear from *Scolari's* that the meat department employees need not exercise the full range of traditional meatcutting craft skills to constitute an appropriate separate unit. They must, however, at least, perform separate and distinct skills and functions from other employees, and, it appears to me that appropriateness of a meat department unit depends upon balancing the degree of the distinct functions and skills of the meat department employees with the other community-of-interest factors traditionally considered by the Board to determine, if on balance, the meat department's community of interest lies within the department or with other employees in the store; see Member Cohen's discussion in footnote 9 of *Scolari's*.

Based on the foregoing considerations, I conclude that the meat department employees have a distinct community of interest apart from the other employees at the Broadview facility. First, it is my opinion that a substantial portion of the Employer's meat department business utilizes boxed meat,

rather than prepackaged or "case-ready" meats. Approximately 40 percent of the Employer's meat sales, not including seafood, is derived from fresh beef, pork, lamb, and veal, which are purchased as boxed meats and in tubes of ground meat. Overall, the percentage of boxed meat processed at the Broadview store is the same as that processed at the Elk Grove store, and in that proceeding, as herein, I found that constituted a substantial portion of the meat department's business. In *Scolari's*, approximately 50 percent of the meat sold was beef, 9 percent pork and one-half percent lamb and veal, and the vast majority of the meat appears to have been boxed. Thus, the percentage of meat department sales from boxed meat in the instant case appears to be comparable to that in *Scolari's*. In *Scolari's*, as in this case, the meat department sales, which were not boxed meat or seafood, were from prepackaged smoked and frozen products, which needed no processing by the meat department employees, other than placing them in their retail cases. Most of the seafood sold is frozen, cooked, shrimp and shellfish. Slightly more than 22 percent of the seafood sales comes from finfish, which I assume is fresh fish, which may be sold whole or filleted. While the sales from the "Blue Light Specials" at the Elk Grove facility totaled more than half of the total seafood sales, at the Broadview facility, the "Blue Light Special" classification accounted for less than 1 percent of the seafood sales. The sales from seafood amounts to less than 10 percent of the total meat department sales. While the Employer in its posthearing brief, asserts that the amount of boxed meat used by the Employer is not significant and the meat department does not spend a substantial portion of its time processing meat, I find that 40 percent of the Employer's sales was boxed meat, which needed to be further processed, and this constitutes a "substantial portion of the Employer's meat department business" *Scolari's*, supra at 158.

Second, the meatcutters at the Broadview store, much the same as the meatcutters at the Elk Grove store, continue to apply specialized meatcutting skills to efficiently process the boxed meat products received into a salable product with a minimum of waste. While it is undisputed that the meatcutters in this case exercise fewer of the traditional skills than the meatcutters in *Scolari's*, they continue to exercise significant traditional meatcutting skills, using their judgment, gained from long years of experience to determine how to cut the boxed meat in order to obtain the most value from it for the Employer. Although the Employer's witnesses testified that the "user ready" meat did not need to be seamed, the Petitioner's witnesses testified that the meatcutters were often seaming meat, even from "user ready" products, as well as on those occasions where commodity meat or primals were used in the meat department. The meatcutters continue to angle meat in order to minimize the loss of valued meat, to face meat, in order to square-up meat prior to cutting on a saw and to chime meat, in order to remove a sharp edge on short loins and pork loins. The meatcutters also custom cut meat upon customers' requests, which requires the skills learned through experience. Thus, the meatcutters continue to demonstrate that the exercise of their traditional skills, performed on a regular and constant basis, which are similar to the skills exercised in *Scolari's*, is sufficient to establish a distinct community of interest for meat department employees.

I find that the record does not support the Employer's position that the meatcutters exercise few of the traditional meatcutting skills. Thus, contrary to the video demonstrations introduced in the record by the Employer and conclusionary testimonial assertions regarding the lack of skills utilized by the meatcutters, the testimony of the meatcutters themselves consistently shows that the meatcutters continue to seam meat, chime, face, and angle the meat cuts. They continue to use their discretion, based on their experience and skills, in cutting meat to maximize profitability for the Employer's benefit. For example, in cutting a chuck roast, if a meatcutter stopped cutting too soon, he would generate a chuck eye steak that would be too small and of poor quality. If he cut too much, he would create a chuck roast with too large a chuck eye and a large fat content. This, of course, would affect the profitability of the product. In cutting a short loin, a meatcutter would first angle the piece of meat in order to further cut the meat correctly. Then he would cut porterhouse steaks until he makes the determination that the change in the meat requires that T-bone steaks are now cut. When the fillet has almost disappeared, the meatcutter could cut the remainder of the meat away from the bone and produce New York strip steaks. Sometimes, the department does not need additional porterhouse steaks or T-bone steaks, and the bone in the short loin is processed to produce only boneless New York strip steaks. While the Employer stresses the difference in the amount of boning done by its meatcutters compared to those in *Scolari's*, the facts of the instant case and the facts in *Scolari's* reveal that boning was not prevalent in either case. Thus, despite the Employer's arguments, the record establishes that the meatcutters herein exercise specialized meatcutting skills.

Furthermore, the Employer's contentions regarding how little training would be needed to perform the meatcutters functions at its store and its minimizing of the skills utilized the by meatcutters is undercut by its own hiring practices of looking for experienced meatcutters and paying them, by far, the highest wages in the store. It defies common experience and expectations that an employer would pay a premium to obtain skills that are not required nor utilized by the employer.

Third, the meatcutters have a higher level of training and skill than other employees of the Employer. All the meatcutters at the Broadview facility were hired with experience and were questioned about their experience when interviewed for job openings. The meatcutter from the Broadview facility, who testified in this proceeding, had 31 years of meatcutting experience. Similarly, when the initial hiring for the Elk Grove facility was completed in early 1994, all the meatcutters had at least 8 years of experience, and all three meatwrappers also had experience. When a new meatcutter was hired recently at the Elk Grove facility, the meat department manager looked for someone with at least 5 years' experience.

The Employer asserts that other employees in the store have a high level of skill. The record shows that the cake decorators in the bakery department must have experience to be employed because of the nature of the work. Additionally, camera counter associates, garden associates who deal with possible hazardous chemicals, and other associates have a substantial learning period before they are fully trained in the job, because of the various products they merchandise. How-

ever, the record does not show that any of the employees of the Employer are required to have the length of experience that the meatcutters have, both because of the highly skilled nature of their work and the safety problems inherent in their work. The absence of apprentices or a formalized apprenticeship program in the meat department is not significant as the record shows that the Employer has made years of experience and high skills a prerequisite for the meatcutter position.

Fourth, while it is undisputed that a smaller percentage of the proposed unit is engaged in specialized meatcutting skills than was present in *Scolari's* and in the Elk Grove proceeding, I find, in view of the other factors showing a separate community of interest for the meat department as a whole, that over 25 percent of the proposed unit engages in the traditional specialized meat cutting skills and this is a substantial portion of the unit. The meatcutters, while less than a majority of the meat department, are central to the operation of the department. They are responsible, in large part, for the processing all the noncase ready product that is sold and are engaged in the most critical parts of the operation of the meat department. The record shows that the meatwrappers and perishable associates assigned to the meat department are fully and functionally integrated with the meatcutters into the operation of the meat department. The associates take the flow of the work from the meatcutters and performing supporting and ancillary functions to the meatcutters in making the product available for consumers. Almost all are full-time employees, as opposed to the remainder of the facility's work force, of which only 23 percent are full-time employees. For example, the meat department associates are permanently assigned to the meat department and at the time of the hearing did not work in other areas of the store. They constantly interact with the meatcutters and wrappers. The degree of departmental integration of the meat department employees is far greater than that which the Board found sufficient to include unskilled meat department employees in a separate unit with skilled meatcutters. Thus, in *Great Scot of Florida*, 256 NLRB 885 fn. 1 (1981), the Board found a meat department unit to be appropriate, even though it included unskilled service clerks who were sometimes assigned to work outside the meat department. See also *R-N Market, Inc.*, 190 NLRB 292 (1971).

Fifth, the meat department has separate immediate supervision from other employees in the store. As set forth above, I have found the meat department manager is a supervisor within the meaning of the Act who has substantial authority over the day to day operations of the meat department and the employees that work in the meat department in scheduling employees work hours, assigning them work, evaluating employees, determining who works overtime, and making effective recommendations as to hiring, discipline, and raises.

Sixth, the record shows that, while there is a little more interchange between meat department employees and other employees in the Broadview store than occurred at the Elk Grove store, it is not substantial. At the Broadview facility, the record shows that only three of the perishable associates, not the meatwrappers, transferred into the meat department from other areas of the facility and none have been transferred out, although some of the associates have sought a transfer. The record does not show that the failure of these associates to transfer out of the department was due to the

opposition of the meat department manager or the receiving department manager. The record also shows that there have been some instances of associates from other departments working temporarily in the meat department and one meat department associate working in the deli department, these have not been numerous. The record shows that, at the Elk Grove facility, for the most part, employees are hired into the meat department based on some previous experience, and they tend to remain with the department, despite the fact that the Employer has a storewide posting system. The record does show that there is a degree of daily contact between meat department employees and other employees in the store as a result of cross merchandising. This, however, appears to be an industrywide occurrence and is not limited to this Employer. For example, meat department employees may go into the produce department to get nonmeat ingredients to make shiskabobs and other store employees may come into the meat department to cross-merchandise shelves. However, most of the daily contacts are of the type that occur in every situation where numerous employees work under one roof, and I do not find them sufficient to negate the separate community of interest of the meat department employees as found herein.

Seventh, as noted above, the meatcutters, at the Broadview as the meatcutters at the Elk Grove facility, receive the highest hourly paid wages in the store. These wages are equal to one of the managers in perishables, but higher than the wages of other two managers in perishables at the Elk Grove facility. It appears that the perishable associates, who are meat wrappers, receive a higher wage than most associates in other departments. These wage rates are similar to the wage rates found in *Scolari's*. Thus, it is clear that the meatcutters receive a wage substantially higher than other employees in both the Elk Grove and Broadview facilities, and this is a significant factor in establishing the meatcutters separate community of interest from other employees. Thus, in a number of the pre-*Scolari's* cases, the wages paid to the meatcutters was similar to those paid to other employees and this was a factor considered by the Board in concluding that they did not have a separate community of interests from other employees. See *Hall's Super Duper*, supra at 1117; and *Ashcraft's Market*, supra at 472.

In sum, it is the opinion of the undersigned that the meat department at the Broadview store is similar to and comparable to the Employer's meat department at the Elk Grove store, in which I found a separate meat department unit to be appropriate. Thus, the record shows that the meat departments at both facilities process about the same percentage of boxed meats that need further processing, the meatcutters at both facility exercise the same level and kinds of specialized meatcutting skills, the Employer requires the same level of training and meat cutting experience for the meatcutters and wrappers at both stores, the meat departments at both stores have substantial separate daily supervision from other employees in the store through managers that exercise the same level of authority, and the meatcutters and wrappers at both stores enjoy higher wages than other employees in the store. The meat department at the Broadview store differs from the meat department at the Elk Grove store in only two relevant respects—there is evidence of a little more interchange among meat department employees and other employees at the Broadview store than at the Elk Grove store and the per-

centage of skilled meatcutters to other meat department employees at the Broadview store is lower than that found at the Elk Grove store. I find that the amount of interchange at the Broadview store, while more than that at the Elk Grove store, is not significant. Only three of the associates at the Broadview store came from other departments and there have been no transfers from the meat department to other departments. The instances of temporary assignments of other employees to the meat department, while sketchy, does not appear to be significant. The percentage of skilled meatcutters to other employees in the meat department is an important factor in determining where the meat department's employees community of interest lies. However, it is the opinion of the undersigned, that a difference in this factor alone can not determine the appropriateness of a meat department unit, especially, when, as herein, the record demonstrates a strong separate community of interest among the meat department employees from other store employees in all the other factors enumerated in *Scolari's*. Accordingly, I find the meatcutters exercise a substantial degree of traditional meatcutting skills; they are more highly skilled than

any of the other employees in the Broadview facility, even if they are not as highly skilled as those in *Scolari's*; the skilled meatcutters constitute a substantial portion of the proposed unit; the meat department has significant separate daily supervision from other employees of the Employer; there is minimal interchange between the employees of the meat department and the other store departments; they generally receive much higher wages than the other employees; and they generally work in a physically separate area from other employees. Thus, I find the instant case is distinguishable from *Kosher Plaza Supermarket*, 313 NLRB 74 (1993), cited by the Employer. In that case there was substantial contact and interchange between the meat department employees and the other employees. Their wage rates were similar to other employees. Accordingly, I find that the meat department employees have a community of interest separate from those of the other store employees, and I shall direct an election in the petitioned-for unit.

There are approximately 14 employees in the unit found appropriate.